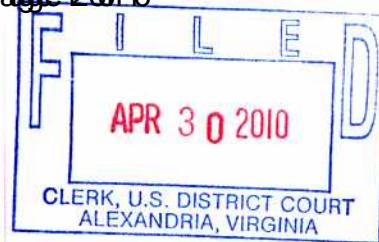


Exhibit A

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



SHULY COHEN,)
)
 Plaintiff,)
)
 v.) 1:10cv237 (LMB/TCB)
)
 LEE HILLMAN, et al.,)
)
 Defendants.)
)
)

ORDER

For the reasons stated in open court, plaintiff's Motion for Preliminary Injunction or, in the Alternative, for Expedited Discovery [42] is DENIED and plaintiff's Motion to Shorten Time for Briefing [45] is DENIED as moot. Defendants' Motions to Stay [18] and for Joinder [22] are GRANTED. Accordingly, it is hereby ORDERED that this action be and is stayed indefinitely in all respects, and it is further

ORDERED that counsel keep the Court informed of the status of the related Delaware case.

The Clerk is directed to remove this civil action from the active docket of the Court and forward copies of this Order to counsel of record.

Entered this 30th day of April, 2010.

Alexandria, Virginia

/s/
Leonie M. Brinkema
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SHULY COHEN, individually and . . . Civil Action No. 1:10cv237
on behalf of all others . . .
similarly situated, . . .

Plaintiff, . . .

vs. . . . Alexandria, Virginia
LEE HILLMAN; PETER AQUINO; April 30, 2010
JOSE CECIN, JR.; BENJAMIN DUSTER IV; DANIEL TSEUNG;
CHARLES LEVINE; CASIMER SKRZYPEZAK; KURT CELLAR;
RCN CORPORATION; YANKEE CABLE ACQUISITION, LLC; YANKEE METRO PARENT, INC.; and YANKEE METRO MERGER SUB, INC., . . .
Defendants. . . .

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: ERIC M. ANDERSEN, ESQ.
Levi & Korsinsky, LLP
30 Broad Street, 15th Floor
New York, NY 10004

FOR THE RCN DEFENDANTS: MICHAEL K. LOWMAN, ESQ.
Jenner & Block LLP
1099 New York Avenue, N.W.
Suite 900
Washington, D.C. 20001

(APPEARANCES CONT'D. ON FOLLOWING PAGE)
(Pages 1 - 16)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 APPEARANCES: (Cont'd.)
2 FOR THE YANKEE DEFENDANTS: JOHN J. TUMILTY, ESQ.
3 Edwards Angell Palmer & Dodge LLP
111 Huntington Avenue
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4 and BRENDAN D. O'TOOLE, ESQ.
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PROCEEDINGS

THE CLERK: Civil Action 10-237, Shuly Cohen v. Lee Hillman, et al. Would counsel please note their appearances for the record.

THE COURT: All right, counsel?

MR. LOWMAN: Good morning, Your Honor. Michael Lowman from Jenner & Block on behalf of the RCN defendants, which is RCN Corporation and the individuals who make up its officers and directors.

THE COURT: All right. Are there other counsel here with you?

MR. LOWMAN: No, Your Honor. I am here by myself on behalf of my clients.

THE COURT: All right. And your clients are here?

MR. LOWMAN: No, Your Honor. We have other defendants.

THE COURT: I'm sorry. Of course you do. Yankee defendants, right? All right.

MR. LOWMAN: Yes, Your Honor.

MR. O'TOOLE: Good morning, Judge Brinkema. Brendan O'Toole from Williams Mullen in Richmond. We are local counsel for the three Yankee defendants. Lead counsel is Mr. John Tumilty, who was admitted pro hac vice earlier this month, and he's here today from Boston.

THE COURT: All right, very good. Nice to see you.

MR. TUMILTY: Good morning, Your Honor.

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THE COURT: Good morning.

And for the plaintiff?

MR. ANDERSEN: Good morning, Your Honor. My name is Eric Andersen on behalf of plaintiff, Shuly Cohen.

THE COURT: All right, this matter is before the Court on the motion to stay of the RCN and Yankee defendants. There's also a motion for preliminary injunction or in the alternative for expedited discovery, which, of course, would be moot if the Court grants the motion to stay.

I'd like the plaintiff to address the issue that the -- there is no longer a preliminary proxy, but as I understand now, the definitive proxy has been filed, and the defendants make much of the fact that your complaint and your claims are addressed to the preliminary but not to the final document.

MR. ANDERSEN: Yes, Your Honor. There was a definitive proxy released, and what we provide, Your Honor, is a black line of differences between the two documents, and if you see the differences, there are not that many, and so that's why, that's why, Your Honor, Your Honor can rule on the motion for preliminary injunction at this point based on the fact --

THE COURT: I'm not going to rule on the motion for preliminary injunction. Do you understand you've cited the wrong standard to the Court? Blackwelder hasn't been good law on the issue of preliminary injunctions for many months.

MR. ANDERSEN: Yes, Your Honor, I saw that, but the

1 thing is is the differences in the standard doesn't affect the
2 result in this case.

3 THE COURT: Why do you say that?

4 MR. ANDERSEN: Your Honor, the case in Delaware hasn't
5 been looked at by a judge yet. There's been many papers filed in
6 that case, okay, but there has not been a status conference or
7 hearing in that case, and this case has already been settled,
8 okay?

9 THE COURT: Whoa, whoa, whoa, whoa, whoa. It's been
10 settled. Now, that's a class action. Isn't it also in Delaware?

11 MR. ANDERSEN: Yes, Your Honor.

12 THE COURT: So there's another group of stockholders who
13 are apparently completely comfortable with or have been able to be
14 satisfied because they've given up that case; it settled.

15 MR. ANDERSEN: There's an MOU that has been prepared.
16 The final documents haven't been given to the vice chancellor. So
17 there has been no judicial oversight of the settlement, and that
18 is the problem. That's why we're here, Your Honor, ultimately is
19 because no depositions have been taken in this case. Documents
20 haven't been received from Deutsche Bank.

21 And so, Your Honor, this case has been settled very
22 hastily, and all we want, Your Honor, is if Your Honor is not
23 prepared to issue a preliminary injunction, is just to provide us
24 the same documents that the plaintiffs got in the Delaware case,
25 and in addition --

1 THE COURT: Well, why didn't you join that case?

2 MR. ANDERSEN: Excuse me?

3 THE COURT: Why didn't you try to enter that case?

4 MR. ANDERSEN: Your Honor, we filed here because we are
5 entitled to additional federal claims under section 14(a) of the
6 Securities Act, specifically 14a-9. So we're entitled to more
7 claims here and have a better shot of getting the requested relief
8 here than in Delaware.

9 THE COURT: Well, how do you respond to the argument
10 that the defendants are making that if this case were to go
11 forward and if this Court were to grant preliminary injunction
12 relief, it could scuttle what appears to be a, at least based on
13 the defendants' papers, a relatively sound offer from a potential
14 purchaser and that it could potentially scuttle that deal, costing
15 other shareholders significant amounts of money?

16 MR. ANDERSEN: Yes, Your Honor. I reviewed the merger
17 agreement, and this is what the merger agreement actually says.
18 The deal -- the termination of this deal if it doesn't close is
19 September 4, 2010. So, Your Honor, we have a lot of breathing
20 room. I mean, nothing has to happen right now, okay?

21 So if Your Honor issues a temporary order, a preliminary
22 injunction that allows me to have access to documents, the deal is
23 not busted up, and ABRY doesn't have the opportunity to go away.

24 THE COURT: But because this is a proxy, I mean, your
25 clients, whatever stockholders or shareholders you represent, are

1 getting access to the nuts and bolts. Isn't it -- it's a
2 multipage proxy as I understand it, isn't it?

3 MR. ANDERSEN: Yes. It's a multipage proxy, Your Honor,
4 but there are problems with the disclosures. I mean, you can, you
5 can write thousands and thousands of pages about nothing, okay?
6 And that's the problem is is there are certain disclosures that we
7 believe are problems.

8 We also have damages claims for price of the \$15 that
9 are being provided to the shareholders, and the settlement that
10 is -- has been signed takes that away. This case is being settled
11 on just revising disclosures, and my client will then have no
12 ability to go in any court to continue to press his claims for
13 price and receive damages if the Court determines that the company
14 is worth, more valuable than \$15.

15 THE COURT: Now, how many shares does your, does your
16 client hold?

17 MR. ANDERSEN: 100, Your Honor.

18 THE COURT: 100 shares?

19 MR. ANDERSEN: Yes, Your Honor.

20 THE COURT: And there are how many hundreds of thousands
21 or millions of shares outstanding?

22 MR. ANDERSEN: I don't know the exact figure.

23 THE COURT: Well, there was a calculation as to what the
24 bond would cost you if you were to get the injunction, because
25 again, the potential risk here is that if an injunction were

1 entered and if the deal goes south as a result of the delay or the
2 fear of litigation and it doesn't happen, rather than \$15 per
3 share, there was some other number that apparently had been
4 floated around earlier.

5 MR. ANDERSEN: Yes, Your Honor. I saw those numbers and
6 those hypothetical calculations of what potentially could be the
7 good faith determination of what a potential bond is, Your Honor.
8 We can argue about bond issues here today.

9 I can tell Your Honor our firm's prepared to enter any
10 size bond that you enter in this action. So if Your Honor
11 believes that we will likely prevail on the merits and you're
12 prepared to issue an injunction and what's holding you back is the
13 bond, we're prepared to put up any size bond.

14 THE COURT: All right, somebody from the defense team
15 give the Court an idea as to how many shareholders we're talking
16 about in that community of --

17 MR. LOWMAN: Your Honor, we're looking at based on what
18 we were able to put together as of record when we filed the paper
19 was over 35 million shares of stock outstanding.

20 THE COURT: All right, but how -- do you know how many
21 actual shareholders that represents?

22 MR. LOWMAN: No, Your Honor, because based on experience
23 back when I was at the commission, it's almost impossible to
24 figure out how many, you know, how many shareholders there are,
25 because most of these shares will be held in street name, they'll

1 be held by DTC. You know, you don't have official --
 2 THE COURT: Are there any -- to your knowledge, are
 3 there any pension funds or large groups like that that are
 4 shareholders in this instance?
 5 MR. LOWMAN: I have -- you know, I can only speculate,
 6 Your Honor. We have -- I have no personal knowledge of that, but
 7 it is a substantial corporation. It would not surprise me that
 8 based on -- that you're going to have those type of institutional
 9 investors holding this security.
 10 THE COURT: Are there classes of shareholders in this
 11 universe of shareholders as well?
 12 MR. LOWMAN: I mean, as far as preferred shares and --
 13 THE COURT: Yeah.
 14 MR. LOWMAN: You know, that -- I believe we're just
 15 talking about one class of common, Your Honor.
 16 THE COURT: Because, you know, the other problem is
 17 there's absolutely been no determination as to whether this
 18 plaintiff would be a proper representative of a class. 100 shares
 19 is de minimis compared to 35 million, which gives this Court huge
 20 concerns.
 21 Most of the class action security cases we get down
 22 here, and we don't get that many -- as many as New York or
 23 probably Delaware, but the people who are coming in asking to
 24 represent a class have a significant stake in the shareholding
 25 population.

1 MR. LOWMAN: I'm aware of that, Your Honor, and I've
 2 been in front of Your Honor in those type of cases.
 3 To give you a -- there were some questions raised
 4 about -- by plaintiff here that I just wanted to address, and part
 5 of it goes to the exceptional circumstances of the case and the
 6 status of where the cases are. Plaintiff would make, make it seem
 7 like that this was sort of this back closet deal, that nothing got
 8 done, no judicial involvement. If you just look at the, how this
 9 case evolved, these cases were only filed three days apart.
 10 THE COURT: And the Delaware case was filed first.
 11 MR. LOWMAN: Was filed first.
 12 And -- but even -- you know, just even if you ignore the
 13 fact of when they were filed, you had a case that literally within
 14 days after the amended -- the original proxy was filed, there was
 15 an amended complaint in Delaware. Therefore, in that case,
 16 there's an answer on file in that case. The plaintiffs in this
 17 case lagged two weeks on top of that, no answer in this case here.
 18 After -- you know, and then right after they filed the
 19 amended complaint, the plaintiffs there promptly filed a motion
 20 for expedited discovery. They filed, they filed a motion for
 21 preliminary injunction. They had an expedited -- they went to the
 22 judge -- I'm sorry, not the judge. They went to Chancellor
 23 Strine, and they had entered -- an expedited schedule put in.
 24 They went to the court and they had commissions entered
 25 and granted by the court to take discovery of Deutsche Bank and

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 1 the advisors. They did the discovery. Thousands and thousands of
 2 papers were produced in that action to those plaintiffs, and there
 3 is a reason why we have a settlement that deals with disclosure
 4 and none of the other money.
 5 The other plaintiffs took the time, they took the
 6 initiative, they brought their case forward, and they looked and
 7 they did their homework. They looked at what the sales process
 8 was. They looked at what was required and what was there and not
 9 there as to supplement the proxy.
 10 So when we issued the defendant a proxy, we didn't do
 11 that on our own. We worked with the plaintiffs in the other case,
 12 and as part of the compromise, we put that out.
 13 But they also -- it's no secret if, you know, you read
 14 the MOU that we filed, the plaintiffs basically made the decision
 15 that there was no "there" there with respect to the procedural
 16 complaints that are in that case, and so, of course, that's why
 17 we're at a situation, you have a company that over the course of
 18 one year had either approached or had people approach them, over
 19 100 potential buyers of this company, and the officers and
 20 directors and the Board of Directors of RCN went above and beyond
 21 the calls of duty to make sure that they not only had an
 22 objectively fair offer, that's witnessed by the Deutsche Bank, you
 23 know, fairness opinion, but it's the best offer that ever came to
 24 the table.
 25 No other offer here came up to \$15 a share, especially

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 1 not one that's cash, especially one that didn't have any
 2 contingencies on financing, especially in this economy. To have a
 3 deal not contingent on financing and have a finance deal in place,
 4 it's -- that's considerable, and that's why we worry about the
 5 risk that, you know, this case gets, gets slowed down, taken off
 6 track, and the merger gets pushed aside.
 7 THE COURT: Do you have a sense as to how many shares
 8 were represented by the plaintiffs in the Delaware action?
 9 MR. LOWMAN: I don't know that off the top of my head,
 10 Your Honor, but I have -- the complaints are in the -- we did
 11 attach the complaints in our papers.
 12 THE COURT: I know you did. And it's multiple
 13 plaintiffs in the Delaware case, isn't it?
 14 MR. LOWMAN: That is correct. But the other, the other
 15 factor, too, and Your Honor sort of touched upon it, while we're
 16 staying on the stay and thinking about the exceptional
 17 circumstances, and Your Honor kind of touched what I was thinking
 18 of when, you know, when I was thinking about this case last night.
 19 You know, we're talking about one plaintiff, a small
 20 shareholder, and we are looking at -- one of the things that we
 21 have to deal with here is look at how they handled this case so
 22 far. When we walk in this court, there's a statue that, you know,
 23 the statue that when we walk in this court is not lost upon anyone
 24 that walks in this door, you know, Justice Delayed, Justice
 25 Denied, and yet we're in the Eastern District of Virginia, which

1 has one of the reputations as being one of the quickest courts in
 2 the country, yet this case is left in the dust and for really no
 3 good reason, and so you sort of ask yourself, you know, when you
 4 had a chance to move the case forward, didn't do it.

5 In fact, when we wanted to have this hearing here, you
 6 know, there was yet again another attempt, a request to delay it
 7 another two weeks, which, you know, resulted in a one-week delay,
 8 but the problem is, you know, this is a \$1.2 billion merger that's
 9 going to be up for shareholder approval in three weeks.

10 Now, you know, this is not a contract case where a week
 11 or two delay is, you know, is not a big deal. I mean, these are
 12 fast-paced, and there's timelines to be made.

13 Now, the reason I sort of went into this is it's sort
 14 of -- I think it's sort of exceptional or one would say
 15 extraordinary that you have a purported class plaintiff, someone
 16 who wants and strives to want to be a representative of this case,
 17 who's in a case that's only been filed three days different, has
 18 basically been left in the dust, and, you know, it is so far
 19 behind the other case.

20 At some point in time, if Your Honor would allow this
 21 case to proceed, you would have to decide is this plaintiff, is
 22 this plaintiff's counsel, are they adequate reps for this class,
 23 and, you know, I would suggest that based on this record, that
 24 these plaintiffs in this potential class of shareholders are being
 25 better represented in Delaware.

1 THE COURT: All right. Well, I've looked at this case.
 2 I've looked at the amended complaint in Delaware. There is
 3 significant overlap between the essence of both cases. There may
 4 be a few extra, you know, federal claims in this case, but the
 5 heart and soul of both pieces of litigation is the same.

6 I'm completely dissatisfied that there's any proper
 7 record at this point that this plaintiff could possibly be a
 8 proper class representative. Again, usually in these class action
 9 security cases, that's one of the first issues we have is we --
 10 and we usually have competing classes of shareholders, but this
 11 case is particularly problematic, because under the new standards
 12 for preliminary injunctive relief, plaintiff is not able to make
 13 all four of the requirements, and the balance of harms, frankly, I
 14 think if one were to use the old *Blackwelder* fashion, would most
 15 likely tip in favor of the defendants, not the plaintiff in this
 16 case, because of the timing of this transaction, the reality of
 17 the current economy, some of the representations made by
 18 Mr. Lowman, including the fact that this is a cash settlement,
 19 there are no warrants or any of these types of paper things that
 20 are often given in these types of transactions, that the
 21 shareholders are guaranteed \$15 in cash if this deal goes through
 22 with, as I understand it, no strings unless I misunderstand the
 23 essence of the acquisition.

24 MR. LOWMAN: No, Your Honor. And that is one of the
 25 things that the board and the special committee who considered

1 this really dwelled on is, you know, they weren't getting
 2 securities, they weren't getting promises of future value. It was
 3 cash on the barrelhead, and that was a, it weighed heavily upon
 4 the factor in the analysis of this merger, Your Honor.

5 THE COURT: All right. So, I mean, clearly under the
 6 kinds of balancing that we still do in a -- or evaluation that we
 7 still do in a request for preliminary injunction, it's just not
 8 there. Moreover, the argument about staying the case makes
 9 absolutely good sense. This Court is very conservative when it
 10 comes to using judicial resources when there's parallel litigation
 11 going on.

12 The Delaware case is ahead of this case, does address
 13 the core issues that are at issue in this case, and that case
 14 ought to be allowed to go forward. So I am going to grant the
 15 motion to stay, although, frankly, a motion to dismiss wasn't far
 16 away from my thinking, but I think that was all that was being
 17 requested, so I'm going to grant the stay at this point, deny the
 18 motion for preliminary injunction as well as the motion for
 19 expedited discovery.

20 I'll direct the clerk to remove this case from the
 21 active docket of the Court and direct counsel to keep us posted as
 22 to, No. 1, the progress in Delaware and also your evaluation as to
 23 whether the case should even remain on the docket. Thank you.

24 MR. LOWMAN: Thank you, Your Honor.
 25 MR. TUMILTY: Thank you, Your Honor.

1 (Which were all the proceedings
 2 had at this time.)

3
 4 CERTIFICATE OF THE REPORTER
 5 I certify that the foregoing is a correct transcript of the
 6 record of proceedings in the above-entitled matter.

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 9 _____ /s/
 10 Anneliese J. Thomson
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